

**IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

**THE STATE OF MISSISSIPPI, BY AND
THROUGH DELBERT HOSEMAN IN
HIS OFFICIAL CAPACITY AS
SECRETARY OF STATE AND
TRUSTEE OF THE PUBLIC
TIDELANDS TRUST**

PLAINTIFF/APPELLANT

FILED
JUL 12 2019

v.

CONNIE LADNER
CIRCUIT CLERK
BY: *Michael May*

CAUSE NO. 12402-2019-103

THE CITY OF BILOXI, MISSISSIPPI

DEFENDANT/APPELLEE

NOTICE OF APPEAL

COMES NOW, Plaintiff/Appellant, the State of Mississippi, by and through Delbert Hosemann in his Official Capacity as Secretary of State and Trustee of the Public Tidelands Trust (the “State” or “Appellant”), and files this its Bill of Exceptions in accordance with Miss. Code Ann. § 11-51-75 and in support of its appeal of the July 2, 2019 decision of the City of Biloxi, Mississippi (the “City” or “Appellee”) wherein the City unanimously passed that certain Resolution Authorizing Agreement with RW Development, LLC for Option to Build and Lease a New Public Municipal Pier and For Related Purposes (the “Resolution”) on Public Trust Tidelands, in violation of The Public Trust Tidelands Act.¹

PARTIES

1. Plaintiff/Appellant, the State, acts herein by and through Delbert Hosemann in his official capacity as Secretary of State of the State of Mississippi and Trustee of the Public Trust Tidelands.

¹ The Public Trust Tidelands Act is codified at Mississippi Code §§ 29-15-1, *et seq.*

2. Defendant/Appellee, the City, is a municipal corporation and may be served with process through service of its Mayor, Andrew “Fofo” Gilich, or the Municipal Clerk, Stacy L. Thacker, at their offices at City Hall, 140 Lameuse Street, Biloxi, Mississippi 39530.

JURISDICTION AND VENUE

3. This Honorable Court has jurisdiction over the instant suit in accordance with Section 11-51-75 of the Mississippi Code.

4. Venue is proper in this Honorable Court.

STATEMENT OF GROUNDS FOR APPEAL

1. On admission to the Union as the State of Mississippi on December 10, 1817, the Federal Government granted ownership in trust to the State of Mississippi on behalf of its citizens all submerged lands waterward of the natural mean high water mark. The State of Mississippi adopted common law concerning ownership of the submerged lands and Public Trust Tidelands. In undisturbed areas, the boundary between State held Public Trust Tidelands and privately held uplands is the current mean high water mark.² Natural erosion or accretion can move or change the boundary between State held Public Trust Tidelands and privately owned lands. Man-made changes such as fill resulting in a Sand Beach do not change the ownership of the subject lands. Such lands filled for a Sand Beach remain State owned Public Trust Tidelands.³

2. Over the years, uncertainty continued to surround the dispute over the boundary between Public Trust Tidelands and private land ownership, and, as a result, The Public Trust Tidelands Act of 1989 was enacted by the Mississippi Legislature to help resolve those issues.⁴

² See Miss. Code Ann. § 29-15-7(1); see also *Hosemann v. Harris*, 163 So. 3d 263, 270 (Miss. 2015).

³ See Miss. Code Ann. §§ 29-15-1, *et seq.*; see also *Secretary of State v. Wiesenberg*, 633 So. 2d 983 (Miss. 1994); *State ex rel. Rice v. Stewart*, 184 So. 44 (Miss. 1938); *Hosemann v. Harris*, 163 So. 3d 263 (Miss. 2015).

⁴ See *Harris*, 163 So. 3d at 270; see also Miss. Code Ann. § 29-15-3(2).

Through the Public Trust Tidelands Act, the Public Trust Tidelands Boundary Map was created (the “Map”).⁵ This Map, consisting of several quadrangles, identified the method by which the boundary of the Public Trust Tidelands at any location can be determined. The quadrangle representing the subject area of Veterans Avenue in the City of Biloxi identifies the upland boundary of the State held Public Trust Tidelands as the toe of the seawall.⁶ As such, the Sand Beach and the submerged lands and tidelands waterward of the Sand Beach, are Public Trust Tidelands owned by the State of Mississippi.

3. The Mississippi Legislature has made the Secretary of State the repository for all state held lands. The Legislature has authorized the Secretary of State, with approval of the Governor, to lease and rent all surface lands, tidelands, and submerged lands owned by the State of Mississippi.⁷

4. Contrary to stated Mississippi law, in its Resolution, the City, without authority, takes the position that it is the “statutorily-designated agent of the State of Mississippi acting as trustee and steward of the Public Trust for Tidelands...”⁸

5. The City of Biloxi has no authority to lease, or to enter an option to lease, State owned property, in this instance Public Trust Tidelands. With notice of the State’s objection to its attempt to do so during the July 2, 2019 City Council meeting, the Biloxi City Council defied Mississippi law and the legislative authority solely granted to the Secretary of State and unanimously voted to enter an option to lease State owned property to RW Development for private commercial purposes.⁹

⁵ See Miss. Code Ann. § 29-15-7; *see also* Public Trust Tidelands Map, attached hereto as Exhibit “A”.

⁶ See Exh. A.

⁷ See Miss. Code Ann. §§ 29-15-1, *et seq.*; *see also* Miss. Code Ann. § 29-1-107.

⁸ See Exh. C, *infra*.

⁹ See Correspondence from the Secretary of State to the City, dated July 2, 2019, attached hereto as Exhibit “B”; *see also* City’s Agenda dated July 2, 2019 with incorporated Resolution No. 5FF and Proposed Agreement with RW Development, attached hereto as cumulative Exhibit “C”.

6. The State hereby desires and designates the following matters be made part of the record:

a. The official minutes of the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi, Mississippi.

b. The transcript of the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi, Mississippi.

c. Audio and video recordings, if any, of the Biloxi City Council meeting held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi, Mississippi.

d. The approved official agenda of the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi. An unofficial copy of the agenda is attached hereto as part of cumulative Exhibit "C."

e. The Agenda Item 5FF as presented for consideration and approval during the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi. An unofficial copy of Agenda Item 5FF is attached hereto as part of cumulative Exhibit "C."

f. The official record of the vote on Agenda Item 5FF as made by the Biloxi City Council during the meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi.

g. The original option agreement as executed, or if not yet executed to be executed, by and between the City of Biloxi and RW Development, as approved by the Biloxi City Council during the meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi.

h. Each and every draft created during the negotiation between the City of Biloxi and RW Development, which resulted in the final version of the option agreement and incorporated lease presented to the City Council for consideration and approval during the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi.

i. All written documents including but not limited to correspondence, letters, memoranda, electronic mail, text messages, or notes concerning, involving, memorializing or identifying any matter including meetings, discussions, and negotiations between representatives of the City of Biloxi and RW Development, LLC, concerning the resolution, option agreement, and incorporated lease presented to the City Council for consideration and approval during the Biloxi City Council meeting, held Tuesday, July 2, 2019, beginning at 6:00 p.m., in the City Council Chambers, Biloxi City Hall, Biloxi Mississippi.

j. The letter dated July 2, 2019, addressed to Mayor Andrew “Fofo” Gilich from the Secretary of State for the State of Mississippi, signed by Raymond D. Carter, and hand delivered by Raymond D. Carter to City of Biloxi Chief Administrative Officer Michael Leonard concerning Council Agenda Item 5FF, July 2, 2019, Resolution Authorizing Agreement with RW Development, LLC for Option to Build and Lease a New Public Municipal Pier and or related purposes. A copy of this letter is attached is attached hereto as Exhibit “B.”

k. Public Trust Boundary Map, Biloxi Quadrangle, Final, December 1994, prepared pursuant to the Tidelands Act of 1989, codified at Mississippi Code Section 29-15-1, et seq. A copy of this map is attached hereto as Exhibit “A.”

PRAYER FOR RELIEF

7. The State requests that this Honorable Court reverse the City’s passage of the Resolution Authorizing Agreement with RW Development, LLC for Option to Build and Lease a New Public Municipal Pier and For Related Purposes and declare same null and void, as the State owns the land at issue, and the State has the sole authority to lease such property, as it is Public Trust Tidelands.


WHEREFORE, PREMISES CONSIDERED, Appellant, the State of Mississippi, by and through Delbert Hosemann in his Official Capacity as Secretary of State and Trustee of the Public Tidelands Trust, respectfully requests that this Honorable Court grant the State the relief requested above against Appellee, and any other relief this Honorable Court deems just and proper.

Respectfully submitted, this the 12th day of July, 2019.

BY: THE STATE OF MISSISSIPPI, BY AND
THROUGH DELBERT HOSEMAN IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE AND TRUSTEE OF THE PUBLIC
TIDELANDS TRUST

BALCH & BINGHAM LLP

BY:



Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this day I have served, via hand delivery, a copy of the foregoing document to the following:

Andrew "Fofa" Gilich
Mayor of the City of Biloxi, Mississippi
140 Lameuse Street
Biloxi, MS 39530

Stacy L. Thacker
Municipal Clerk of the City of Biloxi, Mississippi
140 Lameuse Street
Biloxi, MS 39530

This the 12th day of July, 2019.



Of Counsel